



# Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

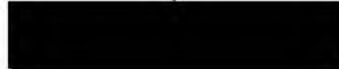
**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 5, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Tsui, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

Jean G. Elle, M.D.



Barbara Dominique, Esq.  
Joyce Elle, Esq.  
Dominique & Elle  
225 Broadway – Suite 2515  
New York, New York 10007

**RE: In the Matter of Jean G. Elle, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 16-111) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Riverview Center  
150 Broadway – Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A solid black rectangular box used to redact the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**In the Matter of**

**Jean G. Elie, M.D. (Respondent)**

**Administrative Review Board (ARB)**

**A proceeding to review a Determination by a Committee  
(Committee) from the Board for Professional Medical  
Conduct (BPMC)**

**Determination and Order No. 16- 111**

**COPY**

**Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner): Paul Tsui, Esq.  
For the Respondent: Joyce Elie, Esq.**

Following the Respondent's New York State criminal conviction for offering a false instrument for filing, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for six months, to limit the Respondent's License permanently, to order the Respondent to complete 60 hours of continuing medical education (CME) courses and to place the Respondent on probation for three years following the suspension. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full.

**Committee Determination on the Charges**

Pursuant to PHL § 230 *et seq*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL

§230(10)(p). The proceeding against the Respondent began with a July 2, 2015 Order by the Commissioner of Health of the State of New York, pursuant to § PHL 230(12)(b), suspending the Respondent's License summarily following the Respondent's conviction for a felony.

The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §6530(9)(a)(i) (McKinney 2016) by engaging in conduct that resulted in a conviction under New York Law. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that the Respondent entered a guilty plea in New York State Supreme Court for Kings County, on February 13, 2015, to Offering a False Instrument for Filing in the First Degree. The charges related to billings submitted for payment by the Medicaid Program. The Court sentenced the Respondent to serve five years on probation and to pay a fine and surcharge.

The Committee concluded that the criminal conviction made the Respondent liable for disciplinary action against his License pursuant to EL §6530(9)(a)(i). The Committee voted to suspend the Respondent's License for six months, place the Respondent on probation for three years following the suspension and place a permanent limitation on the Respondent's License to preclude the Respondent from billing as a part of his medical practice. The Committee also required that the Respondent complete 60 hours CME during the six month suspension, to prepare the Respondent to re-enter practice. The probation terms require that the Respondent practice with a monitor for the first year under the probation.

In considering the sanction, the Committee rejected the Petitioner's request that the Committee revoke the Respondent's License. The Committee accepted as credible the Respondent's testimony that he entered a guilty plea to the criminal charge, because he had no passport while charges were pending and he needed the passport so he could return to Haiti to see his dying mother. The Committee also noted favorably that the Respondent has provided care

in an underserved community for his entire career. The Committee found that the Respondent posed no danger to the public, but expressed concern that the Respondent ignored proper coding in submitting medical bills and expressed concern concerning the Respondent's testimony about how the Respondent billed and how he kept notes for his patients.

### Review History and Issues

The Committee rendered their Determination on November November 12, 2015. This proceeding commenced on November 27, 2015, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on January 13, 2016.

The Petitioner argued that the Committee imposed an insufficient penalty. The Petitioner asked that the ARB overturn the Committee and revoke the Respondent's License, or, in the alternative, suspend the Respondent's License for three years, with two years stayed, order the Respondent to complete 60 CME, limit the Respondent's License to preclude the Respondent from billing and place the Respondent on probation for five years. The Petitioner argued that the Respondent engaged in fraudulent conduct over an extended period, that aggravating circumstances warrant revocation, that disciplinary action is warranted even absent patient harm, that providing care in an underserved area is an insufficient basis for mitigation and that the Respondent lacked remorse or insight into his actions.

The Respondent argued that there was no persistent pattern of fraud in this case. The Respondent entered a guilty plea to one incident that occurred between March 22, 2012 and April 10, 2012. The Respondent contended that he has expressed remorse for his conduct and that he poses no threat to the public. The Respondent pointed out that despite the absence of

patient harm, the Committee did take disciplinary against the Respondent that included License suspension, License limitation, CME and probation. The Respondent asked that the ARB reject the Petitioner's review brief.

### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence

from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. We agree with the Committee that the Respondent poses no danger to the public and we find that the Committee imposed an appropriate penalty in this case by suspending the Respondent's License for six months, limiting the Respondent's License to preclude him from billing, directing that the Respondent complete 60 hours CME during the suspension and placing the Respondent on probation for three years, with a practice monitor during the first year.

**ORDER**

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for six months, to limit the Respondent's License permanently to preclude the Respondent from billing, to require the Respondent to complete sixty hours CME and to place the Respondent on probation for three years under the terms that appear at Appendix 2 to the Committee's Order.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

In the Matter of Jean G. Elie, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Elie.

Dated: 29 March, 2016

A large black rectangular redaction box covering the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Jean G. Elie, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Elie.

Dated: March 30, 2016

  
A black rectangular box redacts the signature of Peter S. Koenig, Sr. The box is positioned above a horizontal line that serves as a baseline for the signature.

Peter S. Koenig, Sr.

In the Matter of Jean G. Elie, M.D.

Steven Grablec, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Elie.

Dated: 3/30/ 2016

  
Steven Grablec, M.D.

In the Matter of Jean G. Elie, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in

the Matter of Dr. Elie.

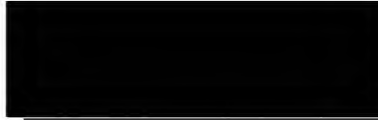
Dated: May 27, 2016

  
Richard D. Milone, M.D.

In the Matter of Jean G. Elie, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Elie.

Dated: 3/29, 2016



John A. D'Anna, M.D.